

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

3  
4 NATIONAL RIFLE ASSOCIATION OF )  
AMERICA, )  
5 )  
Plaintiff, ) CASE NO. 1:18-CV-566  
6 )  
vs. )  
7 )  
ANDREW CUOMO, et al., )  
8 )  
Defendants. )  
9 )

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10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HON. CHRISTIAN F. HUMMEL  
12 THURSDAY, MARCH 5, 2020  
ALBANY, NEW YORK

13 FOR THE PLAINTIFF:

14 Brewer Attorneys & Counselors  
By: John C. Canoni, Esq.  
1717 Main Street, Suite 5900  
15 Dallas, Texas 75201

16 FOR NYS DEFENDANTS:

17 Office of the New York State Attorney General  
By: William A. Scott, AAG  
18 The Capitol  
Albany, New York 12224

19 FOR DEFENDANT VULLO: (by telephone)

20 Emery Celli Brinckerhoff & Abady  
By: Andrew G. Celli & Debra L. Greenberger, Esqs.  
21 600 Fifth Avenue, 10th Floor  
New York, New York 10020

22  
23  
24 THERESA J. CASAL, RPR, CRR, CSR  
Federal Official Court Reporter  
25 445 Broadway, Room 509  
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THERESA J. CASAL, RPR, CRR  
UNITED STATES DISTRICT COURT - NDNY

**NRA v. Cuomo, et al. - 18-CV-566**

1 (Court commenced at 1:36 PM.)

2 THE CLERK: The case is National Rifle Association  
3 of America versus Cuomo, et al., docket number 18-CV-566.  
4 Appearances for the record, please.

5 MR. CANONI: John Canoni from the law firm of  
6 Brewer Attorneys & Counselors for the plaintiff.

7 THE COURT: Good afternoon, Mr. Canoni.

8 MR. CANONI: Good afternoon, your Honor.

9 MR. SCOTT: William Scott, New York State Office  
10 of the Attorney General, for defendants Cuomo and DFS.

11 THE COURT: Good afternoon, Mr. Scott.

12 MR. SCOTT: Good afternoon.

13 MR. CELLI: Good afternoon, your Honor, it's  
14 Andrew Celli and Debbie Greenberger from the law firm of  
15 Emery Celli Brinckerhoff & Abady in New York. It's nice to  
16 meet you and I want to thank the Court for allowing us to  
17 appear by telephone.

18 THE COURT: I'm glad to accommodate you that way,  
19 Mr. Celli, sir. Good afternoon, Miss Greenberger.

20 The Court has before it two letters which have  
21 been filed in this matter, letter motions. Docket number  
22 171 is a law firm from -- excuse me, a letter from  
23 Mr. Celli's firm raising the issue regarding the deposition  
24 of Maria T. Vullo, whom Emery Celli represents, and  
25 specifically raising a concern that if Miss Vullo is deposed

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1 now that the defendant NRA may seek to depose her on a  
2 second occasion after further discovery has been conducted  
3 in this matter and after a decision has been rendered on the  
4 plaintiff's current motion seeking to amend their complaint  
5 to replead their selective enforcement claim.

6 Docket number 174 is a letter filed by Mr. Canoni  
7 in response thereto.

8 Mr. Celli or Miss Greenberger, why don't you tell  
9 me anything you'd like to tell me that's not contained in  
10 your letter.

11 MR. CELLI: Your Honor, thank you. This is Andrew  
12 Celli. It's all pretty much there, your Honor. I do want  
13 to add one thing which we identified over the last couple of  
14 days. Before we were brought into the case as counsel to  
15 Miss Vullo, there was a hearing before Your Honor at the  
16 very early stages where the issue of Miss Vullo's deposition  
17 was being considered, and this was on March 13, 2019, and we  
18 got the transcript and in that transcript there is a  
19 discussion of a very similar issue, which was that the NRA  
20 has made a decision, a tactical decision, to want to take  
21 Miss Vullo's deposition early and there was a concern  
22 expressed, I believe by counsel for Mrs. Vullo at the time,  
23 which would have been Mr. Scott or someone at the AG's  
24 office, that she not be deposed twice. And Your Honor, in  
25 that transcript, on two occasions, makes the point that, you

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1 know, you get one bite of the apple in this business and  
2 that if you want to make a tactical decision to take an  
3 important, in this case, highly-placed official's deposition  
4 early in the discovery process, you know, that is your  
5 choice and you have to live with it.

6 Here we have a situation where she is prepared to  
7 sit, she is prepared to sit relatively soon, in the next few  
8 weeks, couple weeks, we're prepared to give dates for that,  
9 but we want it to be very clear on the record that this is a  
10 decision being made by the NRA at a time when there are open  
11 privilege issues before the Court, document issues that have  
12 been pending for some time and are not decided. There is a  
13 pending motion to amend to add a new claim. There are other  
14 depositions of third-party witnesses that we understand, or  
15 at least one of those we understand, has been put off until  
16 May, and we simply want to be clear that if they want to  
17 proceed, look, if there are gonna be questions that arise  
18 from the NRA letter, but if they do want to proceed that  
19 they do that with their eyes open and we don't want to hear  
20 the argument later that they get some document after Your  
21 Honor's ruling on the privilege or they -- or there's some  
22 clarification that their position with respect to selective  
23 enforcement. We think they should be denied anyway and now  
24 they want to ask for it. That's really where we are, your  
25 Honor.

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1           THE COURT: All right. Mr. Scott, I assume your  
2 position would be the same as Miss Greenberger and  
3 Mr. Celli's?

4           MR. SCOTT: That's correct, your Honor. I think  
5 that the -- conducting the deposition at this time just  
6 seems destined to result in either more motion practice or  
7 more objections than simply waiting until the issues before  
8 the Court are resolved, but I agree with what Mr. Celli and  
9 Miss Greenberger are saying.

10          THE COURT: Mr. Canoni, sir.

11          MR. CANONI: Your Honor, yes. I'd like to start  
12 off with the fact that the Court is aware that there was  
13 issues when the depositions occurred in January and ordered  
14 the deposition to occur again. The privilege issues, just  
15 to borrow Mr. Celli's phrase was a tactical decision by the  
16 defendant who asserts the privilege, no different than if  
17 they asserted the privilege for the first time at the  
18 deposition. That's an issue we can deal with later, but we  
19 want to take her deposition, we have been seeking it since  
20 June of 2018 and I'm happy to hear that Mr. Celli has freed  
21 up some time to have her deposition occur this month.

22          THE COURT: I guess, Mr. Canoni, that's not really  
23 the issue. The issue is what's gonna happen down the road  
24 once the Special Master gets a chance to go through the over  
25 15,000 documents that are subject of a privilege issue and

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1 once Judge McAvoy decides your appeal of my decision  
2 regarding the motion to compel and once a decision is issued  
3 with respect to your Preliminary Injunction and the motion  
4 to serve a second amended complaint to replead the selective  
5 enforcement action. You're gonna be back here again, I  
6 assume, seeking to take a second deposition of Ms. Vullo,  
7 and I think Mr. Celli has made it clear to you and Mr. Scott  
8 that they're going to oppose that.

9 MR. CANONI: And I wouldn't expect anything less,  
10 your Honor. I can't look into a crystal ball. I know we  
11 want to take her deposition and ask her questions that are  
12 within her personal knowledge that we can answer about what  
13 conversations she had with whom and when.

14 THE COURT: All right. You can do that,  
15 Mr. Canoni --

16 MR. CANONI: Right.

17 THE COURT: -- but, again, my recollection is the  
18 same as Mr. Celli's and while I did not have the benefit of  
19 looking at the transcripts, I take pretty detailed notes  
20 during these conferences and I have a clear recollection of  
21 speaking to you, or perhaps it was when Miss Rogers was on  
22 the case, indicating you're entitled to one bite of the  
23 apple and it'll be your burden to establish to the Court  
24 that you should be entitled to a second bite of the same  
25 apple.

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1 MR. CANONI: Yes.

2 THE COURT: I am not gonna tell you now  
3 categorically that I would not grant you that, but I want to  
4 make it clear to you that's your burden to bear and your  
5 burden to go forward with.

6 MR. CANONI: We understand, your Honor. The only  
7 thing I would say is at this point, given the motions that  
8 are pending, I can easily foresee an appeal being taken from  
9 any one of those decisions that Your Honor just referenced  
10 and us being here a year from now with a similar issue at  
11 hand.

12 THE COURT: I sense whatever decision Judge McAvoy  
13 makes with respect to the pending appeal or the decision  
14 with respect to amend the complaint, one of you is gonna  
15 take an appeal either to the Magistrate Judge or the  
16 District Court Judge or perhaps seek leave to go to the  
17 Second Circuit to present these issues, so I don't see this  
18 as something that's going to be resolved in the near future.

19 MR. CANONI: No. And that's our point is then  
20 we're talking about Ms. Vullo being deposed sometime in  
21 2021, 2022.

22 THE COURT: Again, I appreciate your position.

23 MR. CANONI: Yeah.

24 THE COURT: I've made it clear to all of you I  
25 think, if not I will again, this case is very disturbing to

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1 me as dead in the water. To the extent I make a decision  
2 and someone takes an appeal, to the extent Judge McAvoy  
3 makes a decision and someone wants to reargue, I've got a  
4 Special Master looking at in excess of 15,000 documents and  
5 Mr. Scott just provided some additional thumb drive earlier  
6 in the week in response to my direction that he provide more  
7 definite information with respect to the privilege log.

8 So, Mr. Canonì, I guess, to make my point clear,  
9 you want to depose Ms. Vullo, I'll direct that Mr. Celli and  
10 Miss Greenberger produce her. If you seek to depose her  
11 again, you'll have the heavy burden of showing the Court why  
12 it should let you do that, particularly in view of all of  
13 the unresolved issues at the present time.

14 MR. CANONI: That's fine, your Honor. That's more  
15 than acceptable to us.

16 THE COURT: Mr. Celli or Ms. Greenberger, anything  
17 else you would like to put on the record?

18 MR. CELLI: Just from our point of view, we  
19 appreciate the absolute clarity of Your Honor's statement on  
20 this and --

21 THE COURT: Mr. Celli, not to interrupt you, but  
22 I'm frequently wrong, but I'm always certain, sir.

23 MR. CELLI: This is good. I mean, look, as we  
24 said, we should have some dates available the week of the  
25 16th of March, if she's available and they're available, but



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1 the critical issue for us is that the NRA is on notice that  
2 they're gonna have to meet that high burden in order to try  
3 to get her -- everything they know about what's currently  
4 pending.

5 THE COURT: Mr. Canoni has repeatedly indicated  
6 he's aware of that and the position of his predecessor, I  
7 believe, Miss Rogers, took the position as well.

8 Anything else we can do for you, Mr. Celli and  
9 Miss Greenberger, other than to tell you to have a good  
10 weekend?

11 MR. CELLI: Have a good weekend, Judge.

12 MR. CANONI: Your Honor, while we are here, since  
13 this is a little broader than just depositions, I want to  
14 bring up a couple issues while we're all together.

15 THE COURT: Sure.

16 MR. CANONI: One is you previously mentioned the  
17 Special Master's progress. Is there anymore you can tell us  
18 regarding his timeline or --

19 THE COURT: He just received additional  
20 information from Mr. Scott, Mr. Canoni. Mr. Scott dropped  
21 off a thumb drive. Part of the issue that the Special  
22 Master has encountered is it's difficult to tell what  
23 privileges may or may not apply to a particular email  
24 because there was not sufficient information provided.  
25 That's what we asked Mr. Scott to do and he tells me he's

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1 addressed that. I've repeatedly talked to Mr. Hill, the  
2 Special Master, and emphasized the need to him to move this  
3 forward. I am gonna speak to him again next week, I speak  
4 to him every couple of weeks to monitor his process, so  
5 we're on top of this and it's his priority.

6 MR. CANONI: I have no doubt that the Court and  
7 Mr. Hill are on top of it, just --

8 THE COURT: Again, he's trying to get this done as  
9 expeditiously as possible. Beyond that, I don't have a  
10 clear sense.

11 MR. CANONI: Just as a suggestion, Your Honor  
12 asked us when we were here three months ago, if we are back  
13 in front of the Court or the Special Master with respect to  
14 additional documents, sharing the privilege log in advance.  
15 If there were another 15,000 documents, for example, the NRA  
16 may only challenge 5,000 of those which would --

17 THE COURT: Yeah. I've had those conversations  
18 with the Special Master and my law clerks, and if the issue  
19 arises again, we are gonna take another look at this. There  
20 needs to be a better way to expedite this process.

21 MR. CANONI: Certainly. Lastly, your Honor, while  
22 we're here, it's come up in some of the meet and confers  
23 with third parties with respect to document production  
24 subpoenas and deposition subpoenas, is there a way that Your  
25 Honor could put on the record an additional extension of the

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1 discovery deadline, again an interim deadline, be- -- some  
2 third parties are saying discovery is closed as of  
3 October 15th in your case and, therefore, we're not going  
4 to.

5 THE COURT: You send me a letter and I'll address  
6 that for you. Put something on the docket so Mr. Scott and  
7 Ms. Greenberger and Mr. Celli can respond. But I'm happy to  
8 address that for you.

9 MR. CANONI: Obviously, the parties are continuing  
10 to progress as if discovery is continuing.

11 THE COURT: I understand. But if you send me a  
12 letter, I'll reset the deadlines and that way you won't have  
13 any problems with third parties.

14 MR. CANONI: Right. And again, so everyone is  
15 clear, not right but clear, that that will just be an  
16 interim deadline given all the motion practice and --

17 THE COURT: Until all these motions are resolved  
18 and all of your respective appeals are resolved, it's  
19 hard-pressed to set a final deadline because I don't know  
20 what the issues are. For example, if Judge McAvoy sees the  
21 wisdom of your request to file a second amended complaint  
22 and to replead the selective enforcement claim, that reopens  
23 the entire process.

24 MR. CANONI: Correct.

25 THE COURT: So anything else I can do for you,

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1 Mr. Canoni?

2 MR. CANONI: That will do it, thank you very much.

3 THE COURT: Mr. Scott.

4 MR. SCOTT: No, your Honor.

5 THE COURT: You folks are all set, have a good  
6 weekend, thank you.

7 MR. SCOTT: Thank you, your Honor.

8 (This matter adjourned at 1:47 PM.)

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1 CERTIFICATION OF OFFICIAL REPORTER  
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4 I, THERESA J. CASAL, RPR, CRR, CSR, Official  
5 Realtime Court Reporter, in and for the United States  
6 District Court for the Northern District of New York, do  
7 hereby certify that pursuant to Section 753, Title 28,  
8 United States Code, that the foregoing is a true and correct  
9 transcript of the stenographically reported proceedings held  
10 in the above-entitled matter and that the transcript page  
11 format is in conformance with the regulations of the  
12 Judicial Conference of the United States.

13  
14 Dated this 25th day of March, 2020.  
15

16 /s/ THERESA J. CASAL

17 THERESA J. CASAL, RPR, CRR, CSR

18 FEDERAL OFFICIAL COURT REPORTER  
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**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**